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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,755	08/23/2000	Gijs van Rooijen	9369-153/MG	1008

1059 7590 09/02/2003

BERESKIN AND PARR
SCOTIA PLAZA
40 KING STREET WEST-SUITE 4000 BOX 401
TORONTO, ON M5H 3Y2
CANADA

EXAMINER

HELMER, GEORGIA L

ART UNIT PAPER NUMBER

1638

19

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/643,755

Applicant(s)

VAN ROOIJEN ET AL.

Examiner

Georgia L. Helmer

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 3, 5-8, 10, 11 and 13-23.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Arguments

Claim Rejections - 35 USC § 102

1. Applicant traverses, stating primarily that Examiner has no provided any extrinsic evidence establishing that Willmitzer inherently discloses a yield of chymosin of 0.5% of total seed protein. And that therefore, in accordance with the state of the law, Willmitzer cannot be said to anticipate the claims.

Applicant's traversal has been considered and is unpersuasive because the Crown Operations case cited by Applicant deals with product claims whereby the product may not be identical, whereas the claims of the instant case are drawn to a method.

Applicant failed to show why the method steps of Willmitzer are different from that of Applicants. Since the method steps of Willmitzer are the same as the steps recited in the claims, the end result must be necessity be the same. That is, since the claimed method steps are taught by Willmitzer, the amount of chymosin expressed by Willmitzer must by necessity be "at least 0.5%".

2. Applicant traverses, stating primarily that the only enabling disclosure Willmitzer gives with respect to the production of chymosin is using the 35S CaMV promoter which is a constitutive promoter that results in the expression of chymosin in various parts of the plant, and are not directed to expression to the seed as is claims in the present application.

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Applicant's traversal has been considered and is unpersuasive because the test for adequacy of a prior art disclosure to anticipate or render claims obvious is not the same test as that for adequacy of a patent application disclosure to support claims under 35 U. S. C. 112, as taught In re Hafner, 161 USPQ 783, (CCPA 1969).

Claim Rejections - 35 USC § 103

3. Applicant traverses, stating primarily that the teachings of Adang and Applicant's admitted prior art do not remedy the deficiencies of Willmitzer, mainly because Willmitzer does not anticipate the claimed invention. Applicant's traversal has been considered and is unpersuasive because Willmitzer anticipates the claimed invention, as discussed above.


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 703-308-7023. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 703-306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Georgia L. Helmer PhD
Patent Examiner,
26 August 2003

PHUONG T. BUI
PRIMARY EXAMINER


PHUONG T. BUI
PRIMARY EXAMINER 8/27/03